

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.25413 OF 2021

AND

CRL.M.P.NO.14084 OF 2021

William Carry @ William Geri

... Petitioner

Versus

State Rep. by,
The Inspector of Police,
Udumalpet Police Station,
Tiruppur District.
(Crime No.1178 of 2020).

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with the impugned FIR in Crime No.1178 of 2020 on the file of the respondent and quash the same in so far as the petitioner concerned.

For Petitioner : Mr.M.Vijaya Ragavan

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.1178 of 2020, on the file of the respondent Police.

2.The case of the prosecution is that on 24.03.2020, at about 11.30 p.m., when the Sub Inspector of Police, attached to the respondent Police Station along with other Police personnels were on patrol duty, the petitioner along with 19 persons had assembled and raised slogans against the Government to provide reservation in Medical Course and private employment to OBC, SC/ST peoples, violating the prohibition order issued under

Section 144 Cr.P.C., without getting any prior permission. When they were asked to disperse and not to create any law and order problem, they failed to do so. Hence, they were arrested in the spot by the respondent Police and a case in Crime No.1178 of 2020 was registered, for offence under Sections 143 and 269 IPC, as against which, the present Criminal Original Petition.

3.The learned counsel for the petitioner submitted that it is not the case that the petitioner and other accused blocked the free movement of traffic and caused any inconvenience to the public. It is highly improbable that no public had come to lodge a complaint, which would prove the fact that the respondent Police projected a false case against the petitioner. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble, which are essential to a democracy. The petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner restrained anybody. Showing protest is the hallmark of democracy and it is a fundamental right enshrined in the Constitution of India. Article 19(a) confers Freedom of Speech; Article 19(1)(b) confers Right to Assemble; 19(1)(d) permits peaceful march. The peaceful protest in non violent manner would no way attract the violation of any directions and rules.

4.The learned counsel for the petitioner further submitted that the prohibitory order in force has not been properly promulgated and there was no declaration of any such prohibitory order. The respondent Police is duty bound to promulgate if such order was in force, but no steps have been taken as per Section 129 of Cr.P.C., which is mandatory. He further submitted that this Court as well as the Hon'ble Apex Court time and again held that the complainant himself cannot be an investigating officer, which would vitiate the entire investigation. The only exception is that it is to be seen whether any prejudice caused to the accused by such investigation. The petitioner and the other protesters were wearing face mask and maintained social distance as per the Standard Operating Procedure which can never be termed as unlawful assembly.

5.In support of his submissions, the learned counsel for the petitioner relied upon the judgment of this Court in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrI 606."

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that when the Sub Inspector of Police, attached to the respondent Police along with other

Police personnels were on patrol duty, the petitioner along with 19 persons had assembled and raised slogans against the Government to provide reservation in Medical Course and private employment to OBC, SC/ST peoples, violating the prohibition order issued under Section 144 Cr.P.C., without getting any prior permission. When they were asked to disperse and not to create any law and order problem, they failed to do so. Hence, they were arrested in the spot by the respondent Police and a case in Crime No.1178 of 2020 was registered, for offence under Sections 143 and 269 IPC. The points raised by the petitioners are to be decided only during trial and not in this petition and he prayed for dismissal of this quash petition.

7.This Court considered the rival submissions and perused the materials available on record.

8.Showing protest and raising slogans without any disturbance to public and free movement of traffic, is permissible in law. Right to Dissent is the Hallmark of Democracy, the petitioner and other accused only expressed their displeasure which is their fundamental right. There is no material to show promulgation of any prohibitory order which was communicated to the public and there was any disturbance by the petitioner.

9.This Court as well as the Hon'ble Apex Court held that the complainant and the investigating officer should not be one and the same person, unless in exceptional cases, where there is no prejudice caused to the accused. In this case, the prejudice against the accused is very much there, since the complainant is Police and no independent person lodged any complaint. Further, there is nothing to show that there have been any promulgation of prohibitory order and the protesters formed themselves as an unlawful assembly.

10.Admittedly in this case, the occurrence had taken place in the public place and view, no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint. Further, in consequence to the protest, the prosecution failed to show whether any trouble injuries occurred. Thus, the allegations made in the charge sheet, even if taken at face value and accepted in entirety do not prima facie constitute any offence or make out a case against the petitioners.

11.In view of the above, the FIR in Crime No.1178 of 2020, on the file of the 1st respondent Police, is hereby quashed against the petitioner and also against other accused, who are similarly placed. Accordingly, this Criminal Original Petition

is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Udumalpet Police Station,
Tiruppur District.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Vijaya Ragavan, Advocate, S.R.No.428

CRL.O.P.No.25413 of 2021

PMK(CO)
RLP(10/02/2022)